

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

ALTERRA AMERICA INSURANCE CO.,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE, et. al.

Defendant.

Index No. 652813/2012 **E**

Hon. Andrea Masley

**AFFIRMATION  
OF URGENCY**

DISCOVER PROPERTY & CASUALTY  
COMPANY, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652933/2012 **E**

Hon. Andrea Masley

Motion Seq. No. \_\_\_\_\_

**SETH B. SCHAFLE**R, of full age, hereby affirms as follows:

1. I am a Partner of the law firm of Proskauer Rose LLP, counsel for non-parties the Arizona Cardinals Football Club, LLC, the Chargers Football Company, LLC, the Forty Niners Football Company, LLC, The Los Angeles Rams, LLC, The Oakland Raiders, LLP, PDB Sports, Ltd. d/b/a Denver Broncos, the Jacksonville Jaguars, LLC, the Miami Dolphins, Ltd., the Buccaneers Team LLC, the Atlanta Falcons Football Club, LLC, The Chicago Bears Football Club, Inc., the Indianapolis Colts, Inc., the New Orleans Louisiana Saints, LLC, the Baltimore Ravens Limited Partnership, Pro-Football, Inc. d/b/a Washington Redskins, the New England Patriots, LLC, The Detroit Lions, Inc., the Minnesota Vikings Football Club, LLC, the Kansas City Chiefs Football Club, Inc., the New York Jets, LLC, the Panthers Football, LLC d/b/a Carolina Panthers,

the Cincinnati Bengals, Inc., the Cleveland Browns Football Company, LLC, the Philadelphia Eagles, LLC, the Pittsburgh Steelers, LLC, the Tennessee Football, Inc., the Dallas Cowboys Football Club, Ltd., Houston NFL Holdings, LP d/b/a Houston Texans, Football Northwest, LLC d/b/a Seattle Seahawks, the Green Bay Packers, Inc., the Buffalo Bills, LLC and the New York Football Giants, Inc. (collectively, the “Non-Party Teams”), which were each served with subpoenas (collectively, the “Subpoenas”) in connection with the above-captioned insurance coverage actions (the “Coverage Actions”).

2. As demonstrated by my accompanying Affirmation of Irreparable Harm, and the exhibit annexed thereto, and the Memorandum of Law In Support of Order to Show Cause for a Protective Order and a Temporary Restraining Order, the Non-Party Teams are facing immediate and irreparable harm. In particular, unless the Insurers’ multiple proceedings to compel compliance with the Subpoenas are consolidated in one proceeding before this Court and the Insurers are enjoined from litigating such issues in numerous other jurisdictions, the Non-Party Teams will likely face immediate and irreparable injury by having to litigate the identical discovery issues in 32 separate court proceedings in 22 different states, with the real possibility of this resulting in a variety of inconsistent discovery rulings that may obligate one or more of the Non-Party Teams to have inconsistent discovery obligations, including a potential requirement to produce documents that Special Referee Dolinger ruled were either not required to be produced (*e.g.*, the indemnity and damages-related documents) or were held to be privileged (*e.g.*, the Defense Files). Indeed, if one or more Non-Party Teams are required to produce the Defense Files, it would seriously impact the privileged nature of those documents held by other Non-Party Teams and/or the NFL with whom such documents may have been shared.

3. The threat of irreparable harm is not some distant concern. For example, on April 22, 2019, the Insurers filed a discovery proceeding in Indiana state court against the Indianapolis Colts to compel compliance with the Subpoena issued to that team, and the Indiana court issued an order *that same day* requiring production of all responsive documents within 30 days – *without a hearing or providing the Indianapolis Colts with any other opportunity to be heard*. The Indianapolis Colts are now preparing papers seeking reconsideration of that ruling. In addition, a hearing was scheduled in Pennsylvania state court for April 25, 2019 in a proceeding against the Philadelphia Eagles, and only at the last minute did the Insurers agree not to pursue that motion without prejudice when that court refused to adjourn that hearing on consent of the Philadelphia Eagles and the Insurers. Moreover, there are additional imminent deadlines. Just by way of example: (a) there is a hearing currently scheduled in the Illinois action against the Chicago Bears for May 6, 2019; (b) another hearing is currently scheduled in the Pennsylvania action against the Pittsburgh Steelers for May 10, 2019; and (c) there are May 13, 2019 deadlines in the two Maryland proceedings against the Baltimore Ravens and the Washington Redskins.

4. On the morning of April 23, 2019, my colleague, Steven H. Holinstat and I, met and conferred telephonically with the Insurers' counsel (Heather E. Simpson and Mark F. Hamilton) in an effort to obtain the Insurers' agreement to consolidate all of the proceedings against the Non-Party Teams into one, single proceeding before this Court to resolve all disputes over the proper scope and the Non-Party Teams' obligations under the Subpoenas, which would conserve judicial resources, avoid duplicative and wasteful litigation and avoid potentially inconsistent rulings on the same discovery issues. The Insurers' counsel stated that they would consider the proposal and get back to us. I told them that if we did not have an agreement, we would likely need to seek a protective order and a TRO from this Court. About noon on April 24, 2019, after several emails

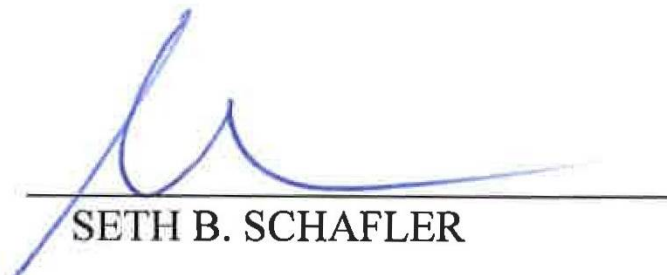
from me prodding a response, the Insurers' counsel told me that they would not agree to consolidation before this Court. Rather, they wanted to enforce the Subpoenas across the country.

5. Pursuant to 22 N.Y.C.R.R. § 202.7(f), on the afternoon of April 25, 2019, I sent an email to counsel for the Insurers and the NFL, telling them that the Non-Party Teams would be filing a motion for a protective order and a TRO on April 25, 2019. I further advised them that I would provide them with copies of the motion and all supporting papers shortly after they were filed, and informed them that my firm would be submitting the application at the Commercial Division Clerk's Office, Room 119A at 60 Centre Street, at around 3:00 p.m. on April 25, 2019.

6. No prior application seeking the relief requested herein has been previously sought.

**WHEREFORE**, it is respectfully requested that the Court grant the Non-Party Teams the relief they have requested in their Order to Show Cause.

Dated: April 25, 2019

  
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SETH B. SCHAFLER

**CERTIFICATION OF COMPLIANCE WITH WORD LIMIT**

I certify that this affirmation complies with the 7,000-word limit under Commercial Division Rule 17. This computer generated affirmation was prepared using Microsoft Word, and based on Microsoft Word's word count function, the total number of words in this affirmation, including of point headings and footnotes and exclusive of the caption and signature block is 945.

Dated: April 25, 2019

  
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SETH B. SCHAFLER